APPENDIX A

Opinion of the Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 18,894

J. C. WHITE, *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

No. 18,897

LEO KUBIK, *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

[May 20, 1968.]

Appeals From the United States District Court for the Southern District of Iowa

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Before MATTHES, MEHAFFY and LAY, *Circuit Judges.*

MATTHES, Circuit Judge.

These appeals are from the judgments of conviction entered upon jury verdicts finding the appellants guilty of the offenses charged in the indictment. Counts I, II and

III of the indictment involve only appellant Kubik. Count I charged that he was a retail dealer in liquors and did not provide and keep in his place of business a record in book form of all distilled spirits received, in violation of 26 U.S.C. §§ 5124, 5603. Count II of the indictment alleged that Kubik, being a person who sold and offered for sale distilled spirits, possessed a liquor bottle in which had been placed distilled spirits other than those contained in the bottle at the time of stamping, in violation of 26 U.S.C. §§ 5301, 5606. Count III charged that Kubik knowingly failed and refused to produce, upon request made by duly authorized officers of the Internal Revenue Service, records showing the source and quantity of all distilled spirits received, in violation of 26 U.S.C. §§ 5124, 5603. Count IV alleged that appellants Kubik and White willfully and knowingly conspired together and with other co-conspirators to carry on the business of a retail liquor dealer without keeping records of receipts and without conforming to other regulations and laws relating to the business of a retail liquor dealer in the purchase of liquor from dealers who had not paid the wholesale liquor dealer tax, in violation of 26 U.S.C. § 5117(a) and 18 U.S.C. § 371.

Kubik was sentenced to a one year term of imprisonment on each count, the sentences to run concurrently, and fined $1,000.00. White was fined $250.00 and sentenced to a term of imprisonment for one year subject to the condition that after he has been confined in a jail-type or treatment institution for ninety days, execution of the remainder of the sentence would be suspended and he would be placed on probation for a period of two years.

The evidence relating to all counts is undisputed. Appellants do not challenge the sufficiency of the evidence except as to Count IV. A summary discussion of the pertinent facts will therefore suffice.

On April 26, 1962 the Carter Lake Fraternal Order of Iowans, Carter Lake, Iowa, was incorporated as a non-

profit corporation pursuant to the laws of Iowa. The articles of incorporation stated that the purpose of the corporation was to provide a meeting place for group discussion on political subjects and to promote Carter Lake, Iowa. The latter is a small community in the extreme western part of Iowa, almost adjacent to the city of Omaha, Nebraska.

There is no evidence to indicate that the stated purposes of the corporate franchise were ever accomplished. To the contrary, the record is replete with evidence that appellants used the corporation as a vehicle for the commission of the offenses charged in the indictment.

After its formation the corporation transacted business as a "bottle club" at a new location in Carter Lake under the name "Shangrila Club." Ostensibly, the night club was operated by the corporation, but Kubik was its manager and, for all practical purposes, the owner. Membership cards were freely distributed which entitled members to enter the club and participate in its facilities, which included a bar, pool tables and a swimming pool.

The activities of Kubik came under suspicion in February, 1964. Finally, on August 21, 1964, LaVerne E. Gooder, an agent of the United States Treasury Department, Bureau of Narcotics, in the company of a businessman known to Kubik, gained admittance to the club.[1] After their admittance, agent Gooder and his companion freely purchased drinks containing distilled spirits. The August 21st performance was repeated on numerous occasions by different agents of the Alcohol and Tobacco Tax Division of the Treasury Department. On each visit the agents gained undercover entry for the purpose of ascertaining whether the club's operations conformed to the law. Al-

[1] The record discloses that both Kubik and White served as watchmen at the entrance to the club, and that they would admit only members, or persons favorably known to them.

though Kubik became acquainted with the agents, he was unaware of their official status. These agents ascertained that whiskey was served from unmarked decanters and sold to any and all occupants of the club for $1.00 per drink.

At 3:00 A.M. on February 6, 1965 agent David O. Finney, a special investigator for the Alcohol and Tobacco Tax Division, accompanied by investigator John Daley of the same Unit, gained admission to the Shangrila Club. After being served drinks, they approached Kubik, identified themselves as agents of the Internal Revenue Service and asked to see his retail liquor dealer records. Kubik responded that he had no records of liquor purchases, but subsequently gave the agents a slip of paper, which was a signed retail order form for three bottles of liquor. The agents' inspection of the premises disclosed three bottles of liquor behind the bar.

Upon inquiry as to whether he kept any other distilled spirits on the premises, Kubik replied that he had more liquor in his car. He then voluntarily opened the trunk of his Cadillac convertible and permitted the agents to inspect its contents. Inside were twenty-nine bottles of distilled spirits. After they had observed the contraband, the agents then arrested Kubik and seized the liquor.

Neither of the appellants testified in his own behalf. Their only witness, a former member of the Carter Lake, Iowa police force, testified that he frequented the Shangrila Club nightly, but that he never saw liquor in the club nor observed Kubik selling liquor.

The primary contention advanced by Kubik is that evidence was admitted "in violation of the Fourth, Fifth and Sixth Amendments to the United States Constitution." Pinpointing this broad contention, Kubik argues that the failure of the investigating agents to warn or advise him of his rights as enunciated in *Escobedo* v. *Illinois,* 378 U.S. 478 (1964) and *Miranda* v. *Arizona,* 384 U.S. 436

(1966), rendered his statements to the investigating agents inadmissible at trial.

The issue as to the admissibility of Kubik's statements was timely raised in a motion to suppress all statements made during the course of the investigation and the liquor seized after the arrest. The district court, Honorable Roy W. Stephenson, conducted a plenary hearing on the motion. In denying it he stated:

> "A suspect's Fifth Amendment privilege against self-incrimination, and his Sixth Amendment right to the assistance of counsel to protect that privilege come into play as soon as law enforcement officers take him into custody or otherwise restrict his freedom of action in any significant way. The requirements of a warning of constitutional rights are confined to situations involving custodial interrogation. *Miranda* v. *Arizona,* 384 U.S. 436, 444, 478-79 (1966); *Escobedo* v. *Illinois,* 378 U.S. 478 (1964)."

Judge Stephenson proceeded to find as a fact that Kubik's statements were made prior to his arrest, and before he had been deprived of his freedom of action in any significant way. The court also declined to suppress the twenty-nine bottles of liquor seized from Kubik's car immediately after his arrest on the ground that he had voluntarily consented to the search.

We fully agree with the district court's findings of fact and conclusions of law and hold that Judge Stephenson properly denied the motion to suppress.

The *Miranda* warnings have not been extended to a pre-custody Internal Revenue inquiry. We so held in *Frohmann* v. *United States,* 380 F. 2d 832, 835-36 (8th Cir. 1967), *cert. denied,* 389 U.S. 976 (1967), where Judge Blackmun cited, as supporting authority, a number of court of appeals and district court opinions. See, *e.g.,*

United States v. *Maius*, 378 F. 2d 716, 718-19 (6th Cir. 1967), *cert. denied*, 389 U.S. 905 (1967); *United States* v. *Mancuso*, 378 F. 2d 612, 619 (4th Cir. 1967), *cert. denied*, ... U.S. .... (1968); *Kohatsu* v. *United States*, 351 F. 2d 898, 902 (9th Cir. 1965), *cert. denied*, 384 U.S. 1011 (1966). *Accord, Spinney* v. *United States*, 385 F. 2d 908, 910 (1st Cir. 1967), *cert. denied*, ... U.S. .... (1968). The same rule has been applied to a pre-custody investigation conducted by agents of the Alcohol and Tobacco Tax Division of the Internal Revenue Service. *United States* v. *Agy*, 374 F. 2d 94, 95 (6th Cir. 1967), *cert. denied*, 389 U.S. 881 (1967).

We are cognizant of *Mathis* v. *United States*, ... U.S. ..., decided by the Supreme Court on May 6, 1968. This decision extends the *Miranda* precepts to the area of civil tax investigations and holds that under appropriate circumstances the warnings must be given prior to interrogation by the investigating agents.

In *Mathis* the defendant's conviction rested partially on incriminating statements and documents obtained from him during a tax investigation conducted in a state prison. The Internal Revenue agents had failed to give the *Miranda* warnings. In reversing *Mathis'* conviction of knowingly filing false claims for tax refunds against the government, the Supreme Court rejected the government's argument that *Miranda* was inapplicable on the grounds that (1) the questions asked were part of a routine tax investigation and (2) defendant had not been put in jail by the agents questioning him, but was there for an entirely separate offense.

In disposing of these contentions the Court stated:

> "These differences are too minor and shadowy to justify a departure from the well-considered conclusions of *Miranda* with reference to warnings to be given to a person *held in custody.*" ... U.S. at ... (Emphasis added.)

That the in-custody status of *Mathis* was the controlling factor of the Court's opinion is clear from the following language:

> "We reject the contention that tax investigations are immune from the *Miranda* requirements for warnings to be given *a person in custody.*
>
> The Government also seeks to narrow the scope of the *Miranda* holding by making it applicable only to questioning one who is 'in custody' in connection with the very case under investigation. There is no substance to such a distinction, and in effect it goes against the whole purpose of the *Miranda* decision which was designed to give meaningful protection to Fifth Amendment rights. We find nothing in the *Miranda* opinion which calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody. In speaking of 'custody' the language of the *Miranda* opinion is clear and unequivocal:
>
> > 'To summarize, we hold that when an individual is taken into custody, or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is in jeopardy.' 384 U.S., at 479."
> > ... U.S. at ... (Emphasis added.)

In view of the significant dissimilarity in facts surrounding the interrogation in *Mathis* we are constrained to conclude that that decision is not controlling in the present case.

The circumstances which precipitated Kubik's motion to suppress are focused chiefly on the events that transpired on October 27, 1964 in Kubik's Shrangrila Club. On this occasion agent Finney, who had previously purchased alcoholic beverages at the Shangrila Club in an undercover

status and had observed the sale of distilled spirits from unmarked decanters, revealed his official status to Kubik and exhibited his credentials. In the ensuing conversation, Finney made inquiry concerning Kubik's retail liquor dealer tax stamp and advised him that federal law required that the stamp be posted at a conspicuous place inside the club. Kubik removed the stamp from his person and attached it to the rear portion of the bar. Kubik admitted that he stored his liquor in the trunk of his car and that he made his purchases from retail liquor stores. Finney read pertinent provisions of the Internal Revenue Code to Kubik and informed him that he was required to purchase liquor from a wholesale liquor dealer who had paid the federal tax. Kubik conceded that he did not keep records of his purchases, whereupon he was advised by Finney to keep a record in book form of all distilled spirits, wine or beer purchased from a wholesaler or retain the original invoices. Kubik indicated that he sometimes poured liquor into decanters to facilitate the distribution of drinks. Finney warned Kubik not to pour liquor into unmarked containers which did not show the payment of the federal tax and indicated that such containers would be subject to seizure on suspicion of containing non-tax paid whiskey.

Kubik at this time was neither arrested nor was he in any respect deprived of his freedom of action. He was in familiar surroundings. The record indicates that Finney was making a conscientious effort to inform Kubik of the requirements of the law and of the necessity of compliance therewith. Kubik displayed a cooperative attitude. He was fully aware that Finney was an agent of the Internal Revenue Service and that his purpose was to investigate the manner in which the club had been and was being operated. Kubik's disclosures to Finney were entirely voluntary, and were not induced by coercion, fraud or misrepresentation. In our view the exents that transpired were part of a pre-custody routine investigation by a diligent

federal agent to determine whether the Shangrila Club had complied with the federal liquor laws. On this record we are convinced that Finney's questions were not tantamount to a custodial interrogation initiated after Kubik had been take ninto custody or otherwise deprived of his freedom of action in any significant way. *Miranda* v. *Arizona, supra* at 444. *Mathis* v. *United States, supra.*

Both appellants assert error in the denial of their motion for judgment of acquittal on the conspiracy count. They assert there is no evidence in the record to establish that they conspired to violate the applicable liquor statutes.[2] We disagree.

In reviewing the sufficiency of the evidence we consider the evidence in the light most favorable to the verdict. *Cave* v. *United States,* ... F. 2d ... (8th Cir. 1968).

Unquestionably, Kubik played the dominant role in the transactions under scrutiny. From their inception, however, White's implication in Kubik's machinations is readily apparent. White was one of the original incorporators of the Carter Lake Fraternal Order of Iowans. He served as an officer of that corporation and filed certain occupational tax returns for it. The inference is clear that he knew the corporation was organized for the operation of a "bottle club" and not for the purposes stated in the articles of incorporation.

In addition, the record is replete with evidence that White actively assisted in the club's operation. He frequently guarded the entrance to the club during Kubik's absence. After Kubik's arrest on the morning of Febru-

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[2] As stated above, concurrent sentences were imposed on Kubik. Since the convictions on the substantive offenses are concededly supported by substantial evidence, we would refrain from considering the sufficiency of the evidence to support the Count IV conviction but for the fact that this is the only count involving appellant White.

ary 6, 1965 agents Daley and Finney reentered the Shangrila Club around 5:30 A.M. and found appellant White working behind the bar. Upon checking behind the bar, agent Daley found two bottles of Hiram Walker Whiskey and thirty-two bottles of Carling's Black Label Beer which had not been there during the agents' earlier visit. The two liquor bottles did not bear stamps required by the Iowa Liquor Commission. Several agents testified that they frequently observed White inside the premises of the club. From these circumstances the jury could readily infer that he was cognizant of the illegal operation. Other government witnesses testified, moreover, that White purchased wholesale quantities of liquor at regular intervals for club use from dealers who had not paid the wholesale liquor dealer's tax under the federal statutes.

In our view there is substantial evidence in the record to support the conspiracy conviction. *Cf. Blumenfield* v. *United States,* 284 F. 2d 46, 53-54 (8th Cir. 1960), *cert. denied,* 365 U.S. 812 (1961); *Isaacs* v. *United States,* 301 F. 2d 706, 724-25 (8th Cir. 1962), *cert. denied,* 371 U.S. 818 (1962).

Appellant White also alleges error in the denial of his motion for a severance. We find no merit in this contention. Rule 8(b), Fed. R. Crim. P., authorizes the joinder of two or more defendants if they are charged in the indictment with participation in the same act or transaction or in the same series of acts or transaction constituting an offense. The conspiracy count provided the necessary link between White's unlawful activities and the substantive offenses with which appellant Kubik was charged. See, *e.g., United States* v. *Bryant,* 364 F. 2d 598, 603 (4th Cir. 1966). The determination whether a defendant's joinder with his accomplices in crime may be prejudicial is addressed in the first instance to the sound discretion of the district judge. His denial of a severance will not be ground for reversal absent an abuse of discretion. *Opper* v. *United*

States, 348 U.S. 84, 94-95 (1954); *Butler* v. *United States,* 317 F. 2d 249, 264 (8th Cir. 1963), *cert. denied,* 375 U.S. 836 (1963). Here, we find no such abuse of discretion. The district court, by its rulings and instructions, effectively eliminated any possibility of prejudice to White by reason of his joinder with Kubik.

Appellants were accorded a fair trial. Their convictions are based on substantial evidence and therefore the judgments should be and are affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

Opinion of the District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Criminal No. 4-1190-C

UNITED STATES OF AMERICA, *Plaintiff,*

v.

LEO KUBIK and J. C. WHITE, *Defendants.*

ORDER

This matter is now before the Court upon the motion of defendant Leo Kubik to suppress evidence.

On January 19, 1966, indictment was filed herein charging in Count I that the defendant Leo Kubik, who was a retail dealer in liquor as defined in 26 U.S.C. § 5122(a),

did not provide and keep certain records as required by 26 U.S.C. § 5124 and in violation of 26 U.S.C. § 5603; in Count II the defendant, being a person who sold and offered for sale distilled spirits, is charged with possessing a liquor bottle in which there had been placed distilled spirits other than those contained in said bottle at the time of stamping under the provisions of 26 U.S.C. § 5205, in violation of 26 U.S.C. §§ 5301 and 5606; in Count III the defendant is charged with knowingly failing and refusing to produce certain records concerning distilled spirits received, upon request made by duly authorized officers of the Internal Revenue Service as required by 26 U.S.C. § 5124 and in violation of 26 U.S.C. § 5603; in Count IV defendant is charged with conspiring with others to violate the aforementioned record keeping statutes, and 26 U.S.C. § 5117(a), 18 U.S.C. § 371.

Prior to the return of the indictment agents of the Internal Revenue Service visited the defendant's premises on several occasions, ultimately climaxed by the defendant's arrest on February 6, 1965. The defendant now moves to suppress any and all statements made by said defendant to the United States Government investigators during their investigation of this cause, for the reason that said investigators did not advise the defendant Leo Kubik "of his constitutional rights to remain silent and to have counsel before he can be interrogated about crimes he is suspected of." The defendant cites *U. S.* v. *Kingry*, C.C.H. 1967 Stand. Fed. Tax Rep. ¶ 9262 at 83.604 (N.D. Fla., 1967). The government contends that statements made by the defendant Kubik were made when he was not in custody, not under arrest, and at a time prior to an accusatory stage of investigation; further, that during the Internal Revenue Agents' general inspection as provided for under 26 U.S.C. § 5146 and 5301, the agents were under no obligation to inform the defendant of his constitutional rights to remain silent; or that anything he might say can and will be used against him in court; or that he has

the right to confer with counsel prior to answering any questions and to have counsel present during the questioning itself; or that if he is an indigent he has the right to have appointed counsel. It is conceded no such warning was given to the defendant Kubik prior to his arrest.

A suspect's Fifth Amendment privilege against self-incrimination, and his Sixth Amendment right to the assistance of counsel to protect that privilege come into play as soon as law enforcement officers take him into custody or otherwise restrict his freedom of action in any significant way. The requirements of a warning of constitutional rights are confined to situations involving custodial interrogation. *Miranda* v. *Arizona,* 378 U.S. 436, 444, 478-79 (1966); *Escobedo* v. *Illinois,* 378 U.S. 478 (1964); *United States* v. *Fiore,* 258 F. Supp. 435, 440 (D.C. W.D. Pa. 1966).

It is the view of the Court that the statements made by the defendant prior to his arrest and prior to the defendant being deprived of his freedom of action in any significant way should not be suppressed. The Court finds after examining the affidavit of the defendant and hearing the testimony of the government agent that the statements made by the defendant Leo Kubik during the course of the investigation and prior to his arrest were not statements made while the defendant was in custody or when his freedom of action was restrained in any significant way.

Defendant further moves to suppress evidence in the form of "(29) bottles of liquor," which he claims were illegally seized. The government contends that the defendant voluntarily consented to the search. The question of whether consent to a search is voluntary is one of fact which turns upon the weight of the evidence and the credibility of the witness. *Maxwell* v. *Stephens,* 348 F. 2d 325, 336-37 (8th Cir. 1965).

After examining the affidavit of the defendant and hearing the testimony of the government agent, the Court finds that the defendant voluntarily consented to the search of the trunk of his automobile where the liquor was stored. In fact it appears from the evidence that the defendant volunteered to show the government agent where the liquor was stored and that he thereafter voluntarily opened the trunk of his car, an examination of which revealed the presence of the "(29) bottles of liquor." The search being lawful, the Court finds that the seizure was lawful. The motion to suppress is denied.

IT IS ORDERED that the motion of the defendant Leo Kubik to suppress statements made by said defendant prior to his arrest is hereby denied.

IT IS FURTHER ORDERED that the motion of the defendant Leo Kubik to suppress evidence in the form of "(29) bottles of liquor" is denied.

Dated this 12th day of April, 1967.

/s/ ROY L. STEPHENSON
Chief Judge

APPENDIX B

Constitution of the United States

Amendment IV—Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V—Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process; Just Compensation for Property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI—Jury Trial for Crimes, and Procedural Rights

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Code

TITLE 18

§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons to any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701.

TITLE 26

§ 5117. Prohibited purchases by dealers

(a) General.—It shall be unlawful for any dealer to purchase distilled spirits for resale from any person other than—

(1) a wholesale dealer in liquors who has paid the special tax as such dealer to cover the place where such purchase is made; or

(2) a wholesale dealer in liquors who is exempt, at the place where such purchase is made, from payment of such tax under any provision of this chapter; or

(3) a person who is not required to pay special tax as a wholesale dealer in liquors.

(b) Penalty and forfeiture.—

For penalty and forfeiture provisions applicable to violation of subsection (a), see sections 5687 and 7302.

Added Pub.L. 85-859, Title II, § 201, Sept. 2, 1958, 72 Stat. 1343.

§ 5124. Records

(a) Receipts.—Every retail dealer in liquors and every retail dealer in beer shall provide and keep in his place of business a record in book form of all distilled spirits, wines, and beer received, showing the quantity thereof and from whom and the dates received, or shall keep all invoices of, and bills for, all distilled spirits, wines, and beer received.

(b) Dispositions.—When he deems it necessary for law enforcement purposes or the protection of the revenue, the Secretary or his delegate may by regulations require retail dealers in liquors and retail dealers in beer to keep records of the disposition of distilled spirits, wines, or beer, in such form or manner and of such quantities as the Secretary or his delegate may prescribe.

(c) Cross references.—

For provisions relating to the preservation and inspection of records, and entry of premises for inspection, see section 5146.

Added Pub.L. 85-859, Title II, § 201, Sept. 2, 1958, 72 Stat. 1345.

§ 5301. General

(a) Requirements.—Whenever in his judgment such action is necessary to protect the revenue, the Secretary or

his delegate is authorized, by the regulations prescribed by him and permits issued thereunder if required by him—

(1) to regulate the kind, size, branding, marking, sale, resale, possession, use and reuse of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits (within the meaning of such term as it is used in section 5002(a)(3)) for other than industrial use; and

(2) to require, of persons manufacturing, dealing in, or using any such containers, the submission to such inspection, the keeping of such records, and the filing of such reports as may be deemed by him reasonably necessary in connection therewith.

Any requirements imposed under this section shall be in addition to any other requirements imposed by, or pursuant to, law and shall apply as well to persons not liable for tax under the internal revenue laws as to persons so liable.

(b) Disposition.—Every person disposing of containers of the character used for the packaging of distilled spirits shall, when required by the Secretary or his delegate, for protection of the revenue, render a correct return, in such form and manner as the Secretary or his delegate may by regulations prescribe, showing the name and address of the person to whom each disposition was made, with such details as to the quantities so disposed of or other information which the Secretary or his delegate may require as to each such disposition. Every person required to render a return under this section shall keep such records as will enable such person to render a correct return. Such records shall be preserved for such period as the Secretary or his delegate shall by regulations prescribe, and shall be kept available for inspection by any internal revenue officer during business hours.

(c) Refilling of liquor bottles.—No person who sells, or offers for sale, distilled spirits, or agent or employee of such person, shall—

(1) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of stamping under the provisions of this chapter; or

(2) possess any liquor bottle in which any distilled spirits have been placed in violation of the provisions of paragraph (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping under the provisions of this chapter; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of the provisions of paragraph (3);

except that the Secretary or his delegate may by regulations authorize the reuse of liquor bottles, under such conditions as he may by regulations prescribe, if the liquor bottles are to be again stamped under the provisions of this chapter. When used in this subsection the term "liquor bottle" shall mean a liquor bottle or other container which has been used for the bottling or packaging of distilled spirits under regulations issued pursuant to subsection (a).

(d) Penalty.—

For penalty for violation of this section, see section 5606.

Added Pub.L. 85-859, Title II, § 201, Sept. 2, 1958, 72 Stat. 1374.

§ 5603. Penalty relating to records, returns, and reports

(a) Fraudulent noncompliance.—Any person required by this chapter (other than subchapters F and G) or regulations issued pursuant thereto to keep or file any record, return, report, summary, transcript, or other document, who, with intent to defraud the United States, shall—

(1) fail to keep any such document or to make required entries therein; or

(2) make any false entry in such document; or

(3) cancel, alter, or obliterate any part of such document or any entry therein, or destroy any part of such document or any entry therein; or

(4) hinder or obstruct any internal revenue officer from inspecting any such document or taking any abstracts therefrom; or

(5) fail or refuse to preserve or produce any such document, as required by this chapter or regulations issued pursuant thereto;

or who shall, with intent to defraud the United States, cause or procure the same to be done, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, for each such offense.

(b) Failure to comply.—Any person required by this chapter (other than subchapters F and G) or regulations issued pursuant thereto to keep or file any record, return, report, summary, transcript, or other document, who otherwise than with intent to defraud the United States, shall—

(1) fail to keep any such document or to make required entries therein; or

(2) make any false entry in such document; or

(3) cancel, alter, or obliterate any part of such document or any entry therein, or destroy any part of such document, or any entry therein, except as provided by this title or regulations issued pursuant thereto; or

(4) hinder or obstruct any internal revenue officer from inspecting any such document or taking any abstracts therefrom; or

(5) fail or refuse to preserve or produce any such document, as required by this chapter or regulations issued pursuant thereto;

or who shall, otherwise than with intent to defraud the United States, cause or procure the same to be done, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense. Added Pub.L. 85-859, Title II, § 201, Sept. 2, 1958, 72 Stat. 1400.

§ 5606. Penalty relating to containers of distilled spirits

Whoever violates any provision of section 5301, or of any regulation issued pursuant thereto, or the terms or conditions of any permit issued pursuant to the authorization contained in such section, and any officer, director, or agent of any corporation who knowingly participates in such violation, shall, upon conviction, be fined not more than $1,000, or imprisoned not more than 1 year, or both, for each such offense. Added Pub.L. 85-859, Title II, § 201, Sept. 2, 1958, 72 Stat. 1402.